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IN THE UNITED STATES SUPREME COURT
OCTOBER TERM, 1988

LEIGHTON EWELL, ROSA McMILLAN,
BETTY CRAIG AND DOLESE CONCRETE COMPANY

PETITIONERS

v.

HONORABLE HERBERT W. THOMPSON,
COMMISSIONER OF CONSERVATION AND
ASSISTANT SECRETARY, OFFICE OF CONSERVATION
OF THE STATE OF LOUISIANA, ET AL.,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the United States Supreme Court has jurisdiction to review a decision of the Louisiana Supreme Court at the instance of petitioners who have suffered no injury in fact, where no personal benefit or practical relief would result from the remedy sought and where there is an adequate and independent state ground for the action of the court?

2. Whether, considering the effect of Order 1047-B of the Louisiana Commissioner of Conservation on these petitioners, the important state interests involved, and the impracticality of requiring a more extensive search, due process required more than the extensive effort that the record reveals was undertaken in this case to provide notice of the hearing?

LIST OF PARTIES

The plaintiffs below in the consolidated cases were Kaiser Aluminum Exploration Company, Park Lane Enterprises, Inc., Expec Resources, Ltd., Acme Brick Company, Tolmak, Inc., Kansas City Southern Railway Company, Chevron U.S.A., Louisiana National Bank, as Trustee for the Kirk E. Williams, Jr. Inter Vivos Trust and Bernadette S. Williams Inter Vivos Trust, David Ewell, and the petitioners herein, Leighton Ewell, Rosa McMillan, Betty Craig, and Dolese Concrete Company.

The defendant below was the Honorable Herbert W. Thompson, Commissioner of Conservation and Assistant Secretary, Office of Conservation for the State of Louisiana, respondent herein.

Intervenors below included respondents Celeron Oil and Gas Company, First Energy Corporation, Union Texas Petroleum, Terra Resources, Inc., Borden, Inc., and TXO Production Corporation. Rolfe McCollister, Sr., T. N. Samuel, Goldie Kizer, Roland C. Kizer, Marion Kizer Jackson, and Roland C. Kizer, Jr., also intervened in the District Court.

The parent company of respondent First Energy Corporation is First Mississippi Corporation. Its affiliates and subsidiaries (other than wholly owned subsidiaries) are Ammonia Producers, FRM Agricultural Sciences Partnership, FirstMiss Gold Inc., Maxadyne Corporation/Industrial Insulation, Inc., Steel Casting Engineering, Ltd., and Triad Chemical.

The parent company of respondent Borden Energy Resources, Inc. is Borden, Inc. Its affiliates and subsidiaries (other than wholly owned subsidiaries) are Broex, S. A., E.S.T.E., S.A., Gallina Blanca, S.A., Preparados Alimenticios, S.A., TRL, S.A., Borden

International Packaging Ltd., Food and Snack Holdings (Singapore) Pte. Ltd., Borden Foods Malaysia Sdn. Bhd., Borden International Phillipines, Inc., Compania Casco S.A.I.C. Borden Chemical (M.) Sdn. Bhd., Compania Chiricana de Leche, S.A., Materiales Moldeables, S.A. de C.V., Compania Quimica Borden Ecuatoriana, S.A., Gun Ei Borden International Resin Co. Ltd., Hitachi Borden Chemical Products, Inc., Korea Borden Chusik Hoesa, Meiji Borden, Inc., Monochem, Inc., Nutrinsa, S.A., and W. Klemme GmbH and Co.K.G.

The entity bearing the responsibility of respondent Celeron Oil and Gas Company for this litigation is Celeron Corporation, whose parent is Goodyear. Its affiliates and subsidiaries (other than wholly owned subsidiaries) are Celeron Trading & Transportation Company and Celeron Pipeline Company.

The parent company of respondent Union Texas Petroleum Corporation is Union Texas Petroleum Holdings, Inc. Its affiliates and subsidiaries (other than wholly owned subsidiaries) are Union Texas Exploration Corporation, Union Texas International Corporation, and Unimar Company.

The parent company of respondent TXO Production Corporation is Texas Oil & Gas Corp. which is a wholly owned subsidiary of USX Corporation. TXO Production Corporation has no affiliates or subsidiaries (other than wholly owned subsidiaries).

The parent company of respondent Terra Resources. Inc. is Pacific Enterprises Oil Company which is a subsidiary of Pacific Enterprises Oil and Gas Company which is a subsidiary of Pacific Enterprises. Terra Resources, Inc. has no affiliates or subsidiaries (other than wholly owned subsidiaries).

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v.

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ON PETITION FOR A WRIT OF CERTIORARI
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BRIEF IN OPPOSITION

JURISDICTION

Petitioners have invoked this Court's jurisdiction under 28 U.S.C. § 1257(3).

Because petitioners have suffered no injury in fact, because no personal benefit or practical relief would result from the remedy sought, and since there is an adequate and independent state ground for the action of the Louisiana Supreme Court, respondents suggest that this Court is without jurisdiction over this matter, all as is set forth fully in the Reasons Why the Petition Should be Denied beginning at p.10.

STATEMENT OF THE CASE

By Order 1047, dated effective November 21, 1978, the Commissioner of Conservation of the State of Louisiana defined the 17,600' Tuscaloosa Sand, Reservoir A, Irene Field, in East Baton Rouge Parish, Louisiana, as that gas and condensate bearing sand between the intervals of 17,575' - 19,112' in the South Louisiana Production, Inc. - R. Kizer #1 Well. The Kizer Well was the discovery well for the field and the only well drilled at the time of issuance of this order. Order 1047 also created twenty drilling and production units (designated as units A-T) for the 17,600' Tuscaloosa Sand, Reservoir A, each of which was shaped in the form of a square with an area of one square mile.[1] Petitioners' property, which at that time was subject to mineral leases granted by petitioners to Martin Exploration Company, was located in units S and T.

On May 17, 1985, Celeron Oil and Gas Company (Celeron), pursuant to Rule 3 of the Rules of Procedure for Conducting Hearings Before the Commissioner of Conservation, adopted effective October 11, 1983 (hereinafter "Rules of Procedure" or "Rules"), mailed to over eighteen hundred persons known by it to own property interests in the Irene Field, written notice of its intention to file an application with the Commissioner, requesting him to redefine the 17,600' Tuscaloosa Sand, Reservoir A, Irene Field; to dissolve the units previously created by Order 1047; and to create revised drilling and production units based upon geological boundaries determined by sixteen additional wells which had been

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[1] For an excellent discussion of the Louisiana Conservation Act and the effects of creation of a drilling and production unit see *Nunez v. Wainoco Oil & Gas Co.*, 488 So.2d 955, 959 (La. 1986), cert. denied, 479 U.S. 925 (1986).

drilled since the issuance of Order 1047. No wells had been drilled during this period in units S and T, the units in which petitioners' property was located. The pre-application notice advised that a pre-application conference would be held on June 6, 1985 to discuss Celeron's proposed application.

After holding the pre-application conference in accordance with the Rules of Procedure, Celeron filed a formal application with the Commissioner on June 10, 1985 in accordance with Rule 7 of the Rules of Procedure. The application also was mailed to over eighteen hundred people owning interests in the Irene Field. Pursuant to Celeron's application, the Commissioner of Conservation prepared a legal notice scheduling a public hearing to consider Celeron's application on July 23, 1985. The Commissioner published this legal notice in the official state journal, the Baton Rouge *State-Times* on June 15, 1985. The applicant, Celeron, mailed this legal notice to over eighteen hundred people owning interests in and around the Irene Field on June 18, 1985. Celeron additionally had this legal notice published in the official journal for East Baton Rouge Parish, the Baton Rouge *State-Times*, on July 2, 1985 and posted the legal notice at the Baker City Hall and East Baton Rouge Parish Courthouse on June 19, 1985. Baker is a city in East Baton Rouge Parish, a substantial part of which is located within the twenty-six square mile pattern of units then in effect for the Irene Field.

After a public hearing held on July 23 and 25, 1985, the Commissioner of Conservation issued Order No. 1047-B, dated effective July 23, 1985. Order 1047-B dissolved the twenty units created by Order 1047; redefined the sand as that interval between 17,575' - 17,730' in the Kizer Well; renamed the newly defined sand the "Upper Tuscaloosa Sand"; recognized two separate

reservoirs, named "Reservoirs A and B" for the Upper Tuscaloosa Sand; and created, on the basis of geological boundaries, six drilling and production units for the Upper Tuscaloosa Sand, Reservoir A, and a single drilling and production unit for the Upper Tuscaloosa Sand, Reservoir B. The only effect of Order 1047-B on petitioners was to dissolve units S and T, which had been totally inactive during their six and one-half years of existence.

From this order, fourteen plaintiffs, Kaiser Aluminum Exploration Company, Chevron U.S.A., Kansas City Southern Railway, Park Lane Enterprises, Inc., Expec Resources, Limited, Louisiana National Bank, as trustee for the Kirk E. Williams, Jr. Inter Vivos Trust and Bernadette S. Williams Inter Vivos Trust, Acme Brick Company, Tolmak, Inc., David Ewell and petitioners sought injunction and judicial review in the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge. Made defendant was Herbert W. Thompson, Commissioner of Conservation.[2] Numerous parties, including respondents, intervened on the side of the Commissioner seeking a judgment affirming Order 1047-B.

Only five of the fourteen plaintiffs in the district court alleged that they failed to receive proper notice; the petition contains no allegations that these parties would have attended and participated at the hearing had they received notice. On June 6, 1986, the trial court upheld the validity of Order 1047-B and dismissed the actions with prejudice.

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[2] Commissioner Thompson was replaced in March of 1988 by J. Patrick Batchelor, the current Commissioner of Conservation.

Eleven of the fourteen plaintiffs appealed this judgment to the Louisiana Court of Appeal, First Circuit.[3] During the pendency of this appeal, Kaiser Energy, Inc. (a sister company to one of the parties challenging Order 1047-B, Kaiser Aluminum Exploration Company), filed a pre-application notice dated September 15, 1986, pursuant to Rule 3 of the Rules of Procedure advising of its intention to request the Commissioner to, *inter alia*, revise certain of the units created by Order 1047-B. This pre-application notice scheduled a pre-application conference for October 7, 1986 and was mailed to numerous parties, including the petitioners. After the pre-application conference, which none of the petitioners attended, Kaiser Energy, Inc. filed an application on October 8, 1986 to the Commissioner requesting a public hearing to accomplish the objectives outlined in its September 15, 1986 letter. This application was mailed to numerous parties, including the petitioners.

After a hearing held on November 18, 1986, which none of the petitioners attended, the Commissioner issued Order No. 1047-B-1, dated effective November 18, 1986, which denied Kaiser's request to revise the Order 1047-B units. (Appendix A). Order 1047-B-1 specifically confirmed Order No. 1047-B and ordered that it be continued in full force and effect. The property which was formerly in units S and T remained totally inactive from the effective date of Order 1047-B through the effective date of Order 1047-B-1. No one filed suit for judicial review of Order 1047-B-1 within the sixty day time period provided by La. R.S. 30:12, thus, this Order, which confirmed Order 1047-B and continued it in force and effect, is final and no longer subject to attack.

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[3] Acme Brick Company, Tolmak, Inc. and Kansas City Southern Railway Company, did not join in the appeal of the trial court decision, and thus, the trial court judgment upholding the order is final, non-appealable and entitled to res judicata effect as to these parties.

Also during the pendency of the appeal, the Commissioner, after compliance with the Rules of Procedure. held a public hearing on the application of Celeron and issued Order 1047-B 2, effective December 11, 1986, which created a single reservoirwide unit for the Upper Tuscaloosa Sand, Reservoir A, based on geological boundaries of the reservoir, and dissolved any then existing drilling and production units which had been created by the Office of Conservation Order No. 1047 series of orders which were inconsistent with the adoption of the reservoirwide unit. (Appendix B). Petitioners were notified by mail of the pre-application conference and the public hearing and attended neither. Order 1047-B-2 is also final, as the delay for seeking judicial review has expired without any party seeking review.

On the basis of Orders 1047-B-1 and 1047-B-2, respondents filed a Motion to Dismiss the plaintiffs' appeal on the ground of mootness. The Court of Appeal denied the Motion to Dismiss. *Kaiser Aluminum Exploration Company v. Thompson*, 512 So.2d 1197 (La. App. 1st Cir. 1987).

On appeal to the Louisiana Court of Appeal, petitioners and the other appellants urged the following assignments of error:

1. The district court erred in finding that adequate notice of the proposed hearing before the Commissioner of Conservation to revise units previously formed by the Commissioner for the Irene Field had been given.

2. The district court erred in failing to find that Order Number 1047-B was issued by the Commissioner of Conservation in violation of La. R.S. 30:6 and Rules 3 and 7 of the Commissioner of Conservation's Rules of Procedure.

3. The district court erred in failing to find that Order Number 1047-B was issued by the Commissioner of Conservation in violation of La. R.S. 49:950 et seq.

4. The district court erred in failing to find that Order Number 1047-B was issued by the Commissioner of Conservation in violation of appellants' due process rights under the United States and Louisiana Constitutions.

5. The district court erred in failing to find that the absence of a Statement of the Underlying Facts supporting Order Number 1047-B's Findings invalidated it.

6. The district court erred in not finding that Order Number 1047-B is invalid because it violates the provisions of La. R.S. 30:3 in that redefining the pool for the Irene Field it excludes known productive strata and thereby encourages waste and the drilling of unnecessary wells.

7. The district court erred in finding that the fact that the effective date of Order Number 1047-B predated the adjournment of the hearing did not invalidate it.

On February 23, 1988, the Court of Appeal reversed the trial court's decision based solely on Assignments of Error Numbers 1 and 2. The Court of Appeal specifically pretermitted discussion on Assignments of Error Numbers 3 through 7.

Respondents filed an application for writ of certiorari with the Louisiana Supreme Court, citing the following assignments of error:

1. The Court of Appeal erred in its failure to grant the Motion to Dismiss as to the notice plaintiffs.

2. The Court of Appeal erred in finding that the notice plaintiffs sustained their burden of proving that substantial rights of theirs were prejudiced by failure to give notice.

3. The Court of Appeal erred in concluding that the statutory thirty day notice requirement in La. R.S. 30:6(B) can be satisfied only if there has been complete compliance with all of the Rules of Procedure for Conducting Hearings Before the Commissioner of Conservation.

4. The Court of Appeal erred in finding noncompliance with Rules 3 and 7 of the Commissioner's Rules of Procedure. In doing so, the Court of Appeal overturned a specific factual finding of the trial court without applying or even considering the manifest error standard.

5. The Court of Appeal erred in its refusal to follow and apply all of the Commissioner's Rules of Procedure, particularly Rule 17, which specifically prohibits the invalidation of a Commissioner's order for failure to follow the other Rules of Procedure.

6. The Court of Appeal erred in invalidating Commissioner's Rule 17 while at the same time requiring strict compliance with related Rules 3 and 7.

7. The Court of Appeal erred in invalidating the entirety of Order 1047-B as to all persons, even those who received notice and participated at the hearing, for the failure to give proper notice to only four of the plaintiffs.

8. The Court of Appeal erred in retroactively applying its declaration that Rule 17, a properly promulgated rule entitled to a legal presumption of validity which could be relied on by the public, is invalid.

Since the Court of Appeal pretermitted the due process question, the body of respondents' application did not specifically address the due process issues, but attached as exhibits to the application were all briefs filed by the parties in the Court of Appeal. These briefs included the arguments and authorities cited by all parties on the due process question.

On May 20, 1988, the Louisiana Supreme Court granted respondents' application, reversed the judgment of the Court of Appeal and reinstated the judgment of the district court.

Petitioners filed an application for rehearing with the Louisiana Supreme Court urging the Supreme Court, *inter alia.*, to consider petitioners' federal due process argument. The application for rehearing was denied September 9, 1988.

On December 5, 1988, petitioners filed with the Louisiana Supreme Court a Motion for Certificate as to Existence of a Federal Question (Appendix C). Petitioners essentially requested the Louisiana Supreme Court to certify that it did not render its decision because of mootness or any other independent state ground, and that it considered and rejected petitioners' due process arguments. The Louisiana Supreme Court denied petitioners' Motion on December 9, 1988.

REASONS WHY THE PETITION SHOULD BE DENIED

1. This Court is Without Jurisdiction to Entertain this Matter

A. Petitioners Have No Standing to Invoke this Court's Jurisdiction

The petitioners herein are unable to satisfy the very minimum constitutional dimension of standing that there be an "actual injury redressable by the court". [4] *Director, etc. v. Perini North River Associates*, 459 U.S. 297, 305 (1983). Petitioners are also unable to demonstrate that they would benefit in any tangible way from this Court's intervention. *Warth v Seldin*, 422 U.S. 490, 508 (1975).

Petitioners claim that they did not receive written notice of the public hearing resulting in the issuance of Order No. 1047-B which had the effect of dissolving twenty geographic units previously established by Order No. 1047. Order 1047-B affected petitioners only by removing their property from undrilled non-producing units, which had been totally inactive from their inception (and thus, units from which petitioners had never participated in production) to a situation where their property was unaffected by any unit.

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[4] Respondents are uncertain whether the disclaimer contained in footnote 1 of the petition that the plaintiffs below who are not petitioners "have not presented this petition" is sufficient to eliminate them as parties in this Court pursuant to Rule 19.6 of the Rules of the United States Supreme Court. We note however, that as all of them received actual mailed notice of the hearing at issue, they would be without standing to raise lack of notice as to petitioners. Moreover, they clearly are bound by Order 1047-B regardless of what this Court might conclude as to the binding effect of Order 1047-B on petitioners. See *e.g., Zablocki v. Redhail*, 434 U.S. 374, 381 N. 6 (1978); *Union Texas, etc. v. Corporation Commission, etc.*, 651 P.2d 652 (Okl. 1981), cert. denied 459 U.S. 837 (1982).

Following dissolution of those units petitioners were free to drill wells upon the property without the requirement of sharing the production in accordance with the geographic units formed by Order No. 1047. Thus, Order 1047-B did not deprive petitioners of participation in production but did remove a restriction on their property rights by dissolving the unit affecting their property.

The Louisiana Supreme Court has specifically recognized that the creation of a drilling and production unit on a person's property by the Commissioner is an infringement of the property rights of its owner. *Nunez v. Wainoco Oil & Gas Co.*, 488 So.2d 955 (La. 1986), cert. denied, 479 U.S. 925 (1986). The Louisiana Supreme Court stated:

> By prohibiting an individual landowner in the unit from drilling wells on their own tracts, by forcing them to share production and by limiting the hydrocarbons that can be produced, the exercise of the Commissioner's power to unitize necessarily results in infringement on the usual rights of ownership. 488 So.2d at 963.

Since Order 1047-B did not in any way affect petitioners' right to participate in production but instead removed a restriction on their property rights, petitioners are unable to establish the threshold requisite of standing; injury.

Moreover, petitioners are unable to establish that any alleged injury that they have suffered is redressable in any meaningful way by the Court. The allegedly tainted Order No. 1047-B was confirmed and continued in force and effect by Order 1047-B-1 and superseded by Order No. 1047-B-2. (Appendix A and B). It is undisputed that the petitioners received mailed notice of the pre-application conference, the application and the official legal notice of

the hearings that resulted in these orders.

Because no suit was filed within the sixty day period allowed for judicial review (La. R.S. 30:12A [2]), it is undisputed that the units created by Order 1047-B and confirmed by Order 1047-B-1 are final and binding on all parties from November 18, 1986 forward. The Louisiana Court of Appeal recognized this fact in its opinion, stating that the only period at issue in the instant case is July 23, 1985 (the effective date of Order 1047-B) to November 18, 1986 (the effective date of Order 1047-B-1).

Under these circumstances, the only result of a declaration that Order 1047-B was invalid would be to recreate the legal fiction that petitioners' land was included in a non-producing, undrilled unit from July 23, 1985 to November 18, 1986. The petitioners have no claim for damages and there would be no redistribution of royalties or other monies with respect to petitioners. No personal benefit would result to petitioners from the remedy that they seek.[5]

None of the petitioners alleged or testified that they would have attended the challenged 1985 hearing had they received mailed notice.[6] The absence is fatal to their standing to invoke this Court's

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[5] Respondents recognize that it has been suggested that a failure to comply with procedural requirements of itself establishes a sufficient injury to confer standing, *City of Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975), although even in such circumstances the alleged injuries must be susceptible to being remedied. *South East Lake View Neighbors v. Dept. of Housing*, 685 F.2d 1027 (7th Cir. 1982).

[6] A representative of petitioner Dolese Concrete was the only one of petitioners to testify on this issue and he was unable to affirmatively state that Dolese would have attended had it been given notice. The strongest testimony that he could muster was that there was "a possibility" that they would have attended.

jurisdiction. *Nat'l Conservative Political v. Federal Election*, 626 F.2d 953 (D.C. Cir. 1980).

It might appear curious to the Court that these petitioners, who have nothing to gain, and who have shown total disinterest in subsequent unitization proceedings, continue to incur the costs of litigating this case. The undisputed evidence introduced at trial is that Kaiser Aluminum Exploration Company, who received actual notice and participated in the hearing, solicited and paid petitioners to join in this litigation to raise the notice issue. Kaiser's interest in production from the Irene Field was drastically reduced by Order 1047-B.

For these reasons we respectfully submit that petitioners have no standing to invoke this Court's jurisdiction.

B. The Case is Moot

The facts set forth hereinabove also demonstrate that this case has become moot.

In the Louisiana Court of Appeal respondents filed a Motion to Dismiss on the basis of mootness. Respondents cited *Hunter Co. v. McHugh*, 320 U.S. 222 (1943) as authority that the instant case had become moot. In *Hunter* the plaintiff claimed that Order No. 28-B of the Commissioner of Conservation was invalid because it unconstitutionally deprived it of three separate property interests without just compensation: 1) the value of its lease; 2) the cost of drilling a well; 3) the cost of laying a pipeline. Subsequently, the Commissioner promulgated Order No. 28-C that prescibed enlarged drilling units comprising 640 acres but did <u>not</u> satisfy any of the plaintiff's three complaints. A later Order, No. 28-C-10, satisfied only the plaintiff's second and third claims for compensation.

Even though the plaintiff therein maintained his claim that Order No. 28-B was null and void because it constituted a taking of plaintiff's lease without compensation, this Honorable Court ruled that Order No. 28-C and Order No. 28-C-10 had superseded the operation of Order 28-B rendering the appeal moot. It is significant that in *Hunter* there was an "interim period" between the promulgation of Order No. 28-B and Order No. 28-C, for which period plaintiff would have been entitled to one hundred percent of the production from its lease if Order No. 28-B was invalid. Despite that fact, and despite the fact that plaintiff did not in the subsequent Orders receive all the relief which he claimed he was entitled, the appeal was ruled to be moot and the case ultimately dismissed for want of a properly presented substantial federal question.

The Court of Appeal refused to apply *Hunter* on the basis that more recent United States Supreme Court cases have more fully defined the concept of mootness citing *County of L.A. v Davis*, 440 U.S. 625 (1979).

Instead, the Court of Appeal specifically ruled that "according to Louisiana jurisprudence, a moot case is one which, when rendered, can give no practical relief. Courts will not rule on questions of law which have become moot since their decree will serve no useful purpose and afford no practical relief", citing *Buchanan v. State Civil Service Commission*, 372 So.2d 1065 (La. App. 1st Cir. 1979). The Court of Appeal held that:

> If on appeal any one of these three issues is resolved in favor of plaintiff-appellants, it could result in invalidation of Order 1047-B and the redistribution of royalties. This fulfills the requirement that there be "practical relief" that the Court can render. See I*n the Matter of Delahoussaye*, 402 So.2d 308 (La. App. 1st Cir. 1981). cert. denied 413 So.2d 494 (La.

1982). 512 So.2d at 1200.

Thus, the Court of Appeal specifically recognized that the cause in this matter would be moot unless invalidation of Order 1047-B could afford the plaintiffs "practical relief" in the form of a redistribution of royalties for the period from July 23, 1985 to November 18, 1986. While the Court of Appeal correctly stated the Louisiana law on the issue of mootness, the Court was clearly in error in its application of the law to the facts of this case as set forth hereinabove.

On application for Writ of Certiorari the Louisiana Supreme Court was urged that not only would the invalidation of Order 1047-B provide no "practical relief" to petitioners, invalidation of the Order would provide them no relief of any kind whatsoever. Invalidation of Order 1047-B for the sixteen month period at issue would only have the effect of resurrecting the units created by Order 1047 for this limited period of time and, because the two units in which the petitioners had interests, units S and T, were undrilled, non-productive units from which petitioners shared no production and received no royalties there would be no redistribution of royalties or any other monies to petitioners, contrary to the reasoning on which the Louisiana Court of Appeal based its denial of the Motion to Dismiss.

It is thus clear, as a matter of Louisiana law, that this case is moot because a declaration that Order 1047-B was invalid for this limited period of time would result in no "practical relief" to petitioners.

Furthermore, respondents respectfully suggest that this case is also moot as a matter of federal law. The reasoning contained in *Hunter* is equally applicable to the instant case and the more recent jurisprudence does not alter that conclusion.

In *Natural Resources Defense Council v. United States Nuclear Regulatory Commission*, 680 F.2d 810 (D.C. Cir. 1982) it was held that the repromulgation of a rule in accordance with the Administrative Procedure Act's procedural requirements moots a claim that the same rule was previously issued without notice and comment. The Court reasoned that although the petitioners were deprived of the opportunity to participate in the initial promulgation of the rule, they were "undeniably provided that opportunity... when [the agency] repromulgated the rule in accordance with the requirements of... the Administrative Procedure Act." *Id.* at 814. The Court concluded that this opportunity provided the petitioner with "everything that it could recover" *Id.* at 814 quoting *California v. San Pablo & Tulare Railroad*, 149 U.S. 308. 314 (1893).

Similarly in *Save Our Cumberland Mountains, Inc. v. Clark*, 725 F.2d 1422 (D.C. Cir. 1984) the Court held that the plaintiffs' claim against the Secretary of Interior challenging rule making because it violated the notice and comment requirements of the Administrative Procedure Act was rendered moot by the Secretary's subsequent procedurally correct promulgation of a superseding rule, because the plaintiffs, who received the opportunity to participate meaningfully in the subsequent rule-making process, received all the relief necessary to eradicate the effects of the allegedly unlawful initial rule making. The case also involved an interim period between the defective agency action and the superseding rule. The Court rejected the argument that the possibility of relief by reinstating the initial valid rule during this interim period saved the case from being moot. Finding that such an argument mischaracterized the deprivation caused by the procedural defect, the Court noted that the loss suffered was the loss of opportunity to participate which opportunity the plaintiffs had received. The Court also found that any ruling by it with respect to the "interim period" would not change

the status quo. As has been demonstrated hereinabove the same is true in the instant case.

The rule that a claim does not become moot where it is capable of repetition, yet evades review, is likewise inapposite. The Court in *Natural Resources Defense Counsel, Inc.*, 680 F.2d at 814 recognized that curative agency action pursuant to notice and comment is more accurately characterized as the provision of appropriate relief than as the "cessation of illegal conduct". Furthermore, the capable of repetition doctrine applies only in exceptional circumstances, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality. *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). This Court has required the showing of a "reasonable expectation" or a "demonstrated probability" that the same controversy will recur involving the same complaining party. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982); *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975).

There is no allegation contained in the record of this case that future action of the Commissioner of Conservation taken without notice would likely affect the petitioners. Instead, the undisputed fact is that the petitioners received individual mailed notice of both of the hearings subsequent to the challenged Order. Petitioners have presented no evidence creating a reasonable expectation that the Commissioner of Conservation will repeat its purportedly unauthorized actions in subsequent proceedings. Any prospect of repetition is thus too speculative to avoid mootness.

For these reasons, respondents suggest that the issues sought to be raised are moot as to the petitioners and that the writ should be denied on that ground.

C. No Substantial Federal Question; Adequate and Independent State Grounds

The jurisdiction of this Honorable Court pursuant to 28 U.S.C. § 1257(3) to review this case is subject to serious doubt. There clearly exists an adequate and independent state ground for the action of the Louisiana Supreme Court; this case is moot as a matter of Louisiana law. *Buchanan v. State Civil Service Commission*, 372 So.2d 1065 (La. App. 1st Cir. 1979).

On Application for Writ of Certiorari to review the decision of the Court of Appeal for the First Circuit, the Louisiana Supreme Court was urged by respondents that invalidation of Order 1047-B would not only fail to provide "practical relief" to the petitioners but that invalidation of the order would provide to them no relief of any kind whatsoever. The Louisiana Supreme Court granted the Writ of Certiorari and summarily reversed the judgment of the Court of Appeal.

On December 5, 1988 petitioners filed a Motion for Certificate as to Existence of a Federal Question in the Supreme Court of Louisiana wherein they represented that the summary reversal left petitioners without a means to establish jurisdiction in the United States Supreme Court. (Appendix C). Petitioners also stated that if the Louisiana Supreme Court concluded that the appeals of the petitioners were moot then it necessarily followed that the Louisiana Supreme Court did not reach the constitutional issues, which would have a direct bearing on the jurisdiction of the Supreme Court of the United States. Petitioners thus endeavored to have the Louisiana Supreme Court execute a Certificate as to Existence of a Federal Question, prepared by petitioners, stating that the Louisiana Supreme Court's reversal was not based upon a finding that the appeals were moot and that the reversal was based upon the due process clause of

the Fourteenth Amendment of the United States Constitution.

On December 9, 1988 the petitioners' Motion for Certificate as to Existence of a Federal Question was denied without comment.

Where the highest state court has entered no written opinion, despite the raising of both federal and state questions, as in this case, the traditional approach of this Court has been to determine whether the state ground raised in the record is adequate to support the judgment, and if so, it has been presumed that the judgment was based on the state ground and jurisdiction has been declined. *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 54-55 (1934); *Adams v. Russell*, 229 U. S. 353, 358-59 (1913); *Woods v. Nierstheimer*, 328 U. S. 211, 216 (1946); *Phyle v. Duffy*, 334 U. S. 431, 437 (1948); *Williams v. Kaiser*, 323 U. S. 471, 477-78 (1945). In such circumstances petitioners have been required to demonstrate that the state grounds could not account for the decision below. *Durley v. Mayo*, 351 U. S. 277, 281 (1956). It has not been sufficient to show that the judgment below "might have rested upon a nonfederal ground." *Stembridge v. Georgia*, 343 U. S. 541, 547 (1952); *Ellis v. Dixon*, 349 U. S. 458, 459 (1955).

In cases in which a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, this Court has recently applied a new presumption that the state court decided the case the way it did because it believed that federal law required it to do so. *Michigan v. Long*, 463 U. S. 1032, 1040-1041 (1983). The test applied in *Michigan* is not susceptible to application in this case. Neither of the decisions of the Louisiana Court of Appeal rest upon federal law and there is no opinion of the Louisiana Supreme Court.

While it is impossible to say with certainty that the Louisiana Supreme Court based its reversal on the issue that the case was moot as a matter of state law, that adequate and independent state ground clearly exists and likely was the basis of the Louisiana Supreme Court's decision. A determination that the case is moot is certainly broad enough, without reference to any federal question implicated by this case, to sustain the state court judgment, notwithstanding any error in deciding the federal question.

Petitioners have recognized their inability to establish jurisdiction in this court without a statement from the Louisiana Supreme Court that its decision was based upon federal law. The Louisiana Supreme Court's denial of the Motion for Existence of a Substantial Federal Question should be interpreted as meaning that the Louisiana Supreme Court is of the opinion that its decision was based upon an independent state law ground, particularly since petitioners represented to that court that denial of the motion would result in their inability to establish jurisdiction in this Honorable Court. As a result, respondents respectfully suggest that this Honorable Court is without jurisdiction to entertain this case.

2. Neither the Decision Below Nor the Record Raises the Question Presented in the Petition

The sole question presented in the petition is :

> Whether the longstanding practice of the Commissioner of Conservation for the State of Louisiana of notice of hearings by publication is sufficient to satisfy the due process requirements of the Constitution of the United States.

Neither of the published opinions by the Louisiana Court of Appeal

deal with that issue and it was not necessary for the Louisiana Supreme Court to reach that question because of mootness.

Moreover the facts of the record will not support a determination of that question by this Court. The premise underlying the question presented is that it is the longstanding practice of the Commissioner of Conservation to give notice of hearings affecting oil and gas interests only by publication. That premise is supported neither by the record nor even by the petition. While it has been the longstanding practice of the Commissioner of Conservation to satisfy the specific thirty day notice requirements of La. R.S. 30:6(B) by publication of a legal notice in the official state journal, the Office of Conservation has recognized that the due process provisions of both the Louisiana and United States Constitutions require additional notice to certain parties when the Commissioner of Conservation adjudicates rights of owners of oil and gas interests by establishing or modifying drilling and production units.

In order to satisfy and exceed due process requirements, the Rules of Procedure provide for many other ways of providing notice to supplement the Section 6(B) thirty day notice. (see Petition, Appendix H). The Office of Conservation has consistently followed these procedures since their adoption in 1983.

Under Rule 3 any party intending to apply for a hearing must send a pre-application notice outlining the proposal to the Commissioner with a copy to each interested owner and represented party. The applicant must make a reasonable effort to determine to whom the notices must be sent in accordance with the rule. If a timely request is made, the applicant must hold a conference at which he must explain the geological and engineering bases for his proposal, and allow other parties with different proposals to do likewise.

Thereafter, pursuant to Rule 7, the party may apply to the Commissioner for a public hearing to consider his unit proposal. His application must also be mailed to each interested owner and represented party. After the Commissioner prepares and publishes the legal notice reflecting the time, date, place and nature of the hearing, the applicant is required to mail the legal notice to all interested owners, represented parties and interested parties along with a copy of the unit plat if said parties have not already been furnished same. Additionally the applicant is required to provide for the posting of a copy of the legal notice and the unit plat in a prominent place in the area affected and to provide for publication of a copy of the legal notice in the newspaper published in the vicinity or general area of the affected field at least fifteen days before the hearing. Evidence to establish compliance with these posting, publishing and mailing requirements is required to be submitted at the hearing.

Thus petitioners' suggestion that this Court should grant the writ to rectify the Louisiana Supreme Court's sanction of a longstanding administrative practice of providing notice only by publication is totally lacking foundation.

The real facts regarding notice of the subject hearing, as set forth in the Statement of the Case hereinabove, is in stark contrast to the picture painted by petitioners. The list of over 1,800 people that were mailed copies of the pre-application notice, the application and the legal notice of the hearing was compiled by the applicant during nine years of exhaustive and expensive record searches and title work. This effort included two entire years of having several employees working full time at the East Baton Rouge Court House researching the ownership of the twelve units (units A-L) which it had requested the Commissioner to form and in which it had

substantial interest. This list was supplemented by the applicant calling some of the other known mineral lessees in the field and requesting that they provide a list of their royalty owners for inclusion on this mailing list. Units M - T (which include units S and T in which petitioners' property is located) were originally formed at the request of Martin Exploration Company, and a representative of the applicant called Martin Exploration Company and asked for a list of its royalty owners in the Irene Field.

Thus the only potential issue is, considering the minimal and beneficial impact of Order 1047-B on the owners in units M - T, whether due process required the Commissioner or the applicant, in addition to the request to Martin Exploration Co., to engage in an extended, impractical search for the names and addresses of all parties owning interests in this highly populated eight square mile area.

Making this matter more unique is petitioners' argument that "no effort was made to notify the owners in units M - T". Petitioners argue that while the representative of Celeron made a request to Martin Exploration Company for a list of its royalty owners, his unexpressed intention was to receive only a list of royalty owners from Martin Exploration Company within units A - L. The District Court rejected this argument and found that the applicant had requested Martin Exploration Company to provide it with a list of royalty owners, whereas the Court of Appeal used the unexpressed intention of this representative to rule that no effort had been made by the applicant to compile a list of the owners in units M-T. One of the assignments of error in the respondents' application for Writ of Certiorari to the Louisiana Supreme Court was the Court of Appeal's improper reversal of this factual finding of the District Court without applying the "manifest error" rule applicable in Louisiana.

The foregoing illustrates that the issues involved here are not of general application and any ruling by this Court likely will apply only to this very unique case.

3. The Decision of the Louisiana Supreme Court Does Not Conflict With Decisions of this Court

Even if the Louisiana Supreme Court did consider the due process issue, its decision does not conflict with *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950), *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) or *Tulsa Professional Collection Services, Inc. v. Pope*, ___U.S. ____, 108 S.Ct. 1340 (1988) as contended by petitioners. These cases define the requirements of due process in the context of a judicial proceeding. The action being reviewed is an administrative adjudication, and this court has repeatedly held that the more strict due process requirements applicable to judicial proceedings need not be applied to administrative adjudications. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976); *Dixon v. Love*, 431 U.S. 105, 115 (1977). Even applying judicial standards, while *Mullane* did hold that notice effected by publication was insufficient in many instances, this court made the following comments approving of notice by publication in certain circumstances:

> This Court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning. Thus it has been recognized that, in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights. (Citations omitted.)

Those beneficiaries represented by appellant whose interests or whereabouts could not with due diligence be ascertained come clearly within this category. As to them the statutory notice is sufficient. However great the odds that publication will never reach the eyes of such unknown parties, it is not in the typical case much more likely to fail than any of the choices open to legislatures endeavoring to prescribe the best

Nor do we consider it unreasonable for the State to dispense with more certain notice to those beneficiaries whose interests are either conjectural or future or, although they could be discovered upon investigation, do not in the due course of business come to knowledge of the common trustee. Whatever searches might be required in another situation under ordinary standards of diligence, in view of the character of the proceedings and the nature of the interests here involved, we think them unnecessary. We recognize the practical difficulties and costs that would be attendant on frequent investigations into the status of great numbers of beneficiaries, many of whose interest in the common fund are so remote as to be ephemeral; and we have no doubt that such impracticable and extended searches are not required in the name of due process. The expense of keeping informed from day to day of substitutions among even current income beneficiaries and presumptive remainderman, to say nothing of the far greater number of contingent beneficiaries, would impose a severe burden on the plan, and would likely dissipate its advantages. These are practical matters in which we should be reluctant to disturb the judgment of state authorities. *Mullane*, at 317-318 and 658-659. (Emphasis added)

Even petitioners recognize (see p. 13 of the Petition) that *Mullane* and its progeny have made clear that the issue of the sufficiency of notice is not subject to a single rule of universal application requiring mailed notice under all circumstances. Petitioners correctly recognize that in this case, the sufficiency of notice is to be evaluated in light of the effect that requiring actual notice may have on important state interests and the reasonability of ascertaining the identity of persons affected by state action (see p. 13 of the Petition). This Court has also considered, in evaluating the sufficiency of notice, the nature of the private interests involved and the effect of the proposed state action on those interests. *Mullane*, supra; *Mathews v. Eldridge* supra at 906.

The latter two factors have previously been discussed in this brief and will not be repeated here.

There are undeniably important state interests involved here. The units created by Order 1047 were arbitrary square units not reflecting the true geological boundaries of the reservoir, since they were created at a time when only one well was present and the areal extent of the reservoir was unknown. After the field had been developed by the drilling of sixteen additional wells the Commissioner became aware through the application that the geological boundaries of the reservoir were ascertainable. Large areas within the units which had been sharing in production were shown by this drilling activity not to be underlain by the reservoir. Continuing the allocation of production to these non-productive areas would have deprived the owners of the truly productive area of their just and equitable share of production from the reservoir. This information compelled the Commissioner to revise the units as soon as possible, not only because of the statutory mandate set forth in the Louisiana Conservation Act, but also because of the dictates of the

substantive due process provisions of the United States and Louisiana Constitutions preventing the taking of property rights without compensation. Requiring actual notice to all parties in this case would have significantly delayed the proceeding and the consequent equitable adjustments to the allocation of production.

The essence of the problem was summarized concisely by the testimony of Lawrence Ringham, the president of Park Lane Enterprises, Inc., one of the plaintiffs below. After identifying Park Lane's leases in yellow on Exhibit P-22 (Prel. Inj. Transcript, pp 41-2), Ringham admitted that approximately half of this acreage was outside the productive area of the Irene Field, even under the geological interpretation that Park Lane asked the Commissioner to adopt (Prel. Inj. Transcript, p 56). Mr. Ringham then testified as follows:

ABELL: Okay. If you've got $2.5 million based on receiving 100% of the yellow acreage, then in fact you received $1.25 million for production attributable to lands which even your geologist couldn't believe had any gas or oil under it. Is that correct?

RINGHAM: That is correct.

ABELL: And you wish the squares would have stayed like that so you would continue to get all that production, don't you?

RINGHAM: Obviously that's the optimum, I'm a businessman, Mr. Abell.

See Prel. Inj. Transcript, pp. 59-60.

The importance of the state interest in quickly rectifying the inequitable allocation of production caused by its earlier order must be weighed heavily in the due process analysis .

In summary, this case may involve the application of this Court's decisions regarding sufficiency of notice to the facts of the instant case, but the Louisiana Supreme Court's decision is in no way in conflict with those decisions. The unusual facts of this case make it unique and any decision by this Court would affect few, if any, other litigants.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

STATE OF LOUISIANA
OFFICE OF CONSERVATION
BATON ROUGE, LOUISIANA

December 5, 1986

ORDER NO. 1047-B-1

Order concerning the dissolution of the units created by order No. 1047-A for the 17600' Tuscaloosa Sand, Reservoir A and denying the application for revision of the U TUSC RA SUD and U TUSC RA SUE created by Office of Conservation Order No. 1047-B for the Upper Tuscaloosa Sand, Reservoir A, IRENE FIELD, East Baton Rouge Parish, Louisiana.

****

Pursuant to power delegated under the laws of the State of Louisiana, and Particularly Title 30 of Louisiana Revised Statutes of 1950, and after a public hearing held under Docket No. 86-703 in Baton Rouge, Louisiana, on November 18, 1986, upon the application of KAISER ENERGY, INC. following legal publication of notice and notice in accordance with rules prescribed by the Commissioner of Conservation, the following order is issued and promulgated by the Commissioner of Conservation as being reasonably necessary to conserve the natural resources of the state, to prevent waste as defined by law, to avoid the drilling of unnecessary wells, and otherwise to carry out the provisions of the laws of this State.

DEFINITION

The 17600' Tuscaloosa Sand, Reservoir A in the Irene Field, East Baton Rouge Parish, Louisiana was fully defined in Office of Conservation Order No. 1047, effective November 21, 1978.

The Upper Tuscaloosa Sand, Reservoir A in the Irene Field, East Baton Rouge Parish, Louisiana was fully defined in Office of Conservation Order No. 1047-B effective July 23, 1985.

FINDINGS

The Commissioner of Conservation finds as follows:

1. That Office of Conservation Order No. 1047-A, effective September 18, 1979, created five (5) drilling and production units for the exploration for and production of gas and condensate from the 17600' Tuscaloosa Sand, Reservoir A, in the Irene Field, East Baton Rouge Parish, Louisiana, said units being designated 17600 TUSC RA SU U, V, W, X, and Y.

2. That Office of Conservation Order No. 1047-B, effective July 23. 1985. established rules and regulations and created drilling and production units, for the exploration for and production of gas and condensate from the Upper Tuscaloosa Sand, Reservoir A, in the Irene Field, East Baton Rouge Parish, Louisiana, including the units designated U TUSC RA SUD and U TUSC RA SUE.

3. That the additional geological and engineering data obtained since the issuance of such orders held herein establishes that there should be no change in the U TUSC RA SUD and U TUSC RA

SUE created by Order 1047-B, and accordingly all request to revise such units should be denied.

4. That the same evidence establishes that the 17600 TUSC RA SU U, V, W, X, and Y created by order No. 1047-A appear to be non-productive and therefore should be dissolved.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. In view of the above Findings, all request for revision of the U TUSC RA SUD and U TUSC RA SUE created by Office of Conservation Order No. 1047-B effective July 23, 1985, be and are hereby denied, and Order 1047-B is hereby confirmed and continued in force and effect.

2. The 17600 TUSC RA SU U, V, W, X and Y, created by Office of Conservation Order No. 1047-A effective September 18, 1979 be and they are hereby dissolved.

This order shall be effective on and after November 18, 1986.

OFFICE OF CONSERVATION
OF THE STATE OF LOUISIANA

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L

/s/ Herbert W. Thompson
HERBERT W. THOMPSON
COMMISSIONER OF CONSERVATION

APPENDIX B

STATE OF LOUISIANA
OFFICE OF CONSERVATION
BATON ROUGE, LOUISIANA

December 22, 1986

ORDER NO. 1047-B-2

Order concerning dissolution of any currently existing drilling and production units created by the Office of Conservation Order 1047 Series of Orders which are inconsistent with the adoption of the proposed reservoirwide unit, and the simultaneous creation of a reservoirwide unit for the Upper Tuscaloosa Sand, Reservoir A, in the IRENE FIELD, East Baton Rouge Parish, Louisiana.

****

Pursuant to power delegated under the laws of the State of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, and after a public hearing held under Docket No. 86-702 in Baton Rouge, Louisiana, on December 11, 1986, upon the application of Celeron Oil and Gas Company, following legal publication of notice and notice in accordance with rules prescribed by the Commissioner of Conservation, the following order is issued and promulgated by the Commissioner of Conservation as being reasonably necessary to conserve the natural resources of the State, to prevent waste as defined by law, to avoid the drilling of unnecessary wells and otherwise to carry out the provisions of the laws of this State.

DEFINITIONS

The Upper Tuscaloosa Sand, Reservoir A, in the Irene Field, East Baton Rouge Parish, Louisiana, was previously defined in Office of Conservation Order No. 1047-B.

"Unit Agreement," as used herein shall mean and refer to the agreement which sets forth the plan and terms of unit operation and which was admitted into evidence in connection with Docket No. 86-702". Said agreement is on file in the official records of the Office of Conservation in Baton Rouge, Louisiana, and is made a part hereof by special reference.

FINDINGS

The Commissioner of Conservation finds as follows:

1. That Office of Conservation Order No. 1047-B, effective July 23, 1985, created six (6) drilling and production units, designated SU A, B, C, D, E, and F, for the Upper Tuscaloosa Sand, Reservoir A in the Irene Field, East Baton Rouge Parish, Louisiana.

2. That the additional geological and engineering evidence obtained since the creation of these units indicates that the units designated SU A, B, C, D, E, and F, heretofore created, should be dissolved and, simultaneously, there should be created a single reservoirwide unit comprised of the entire Upper Tuscaloosa Sand, Reservoir A, in the Irene Field, East Baton Rouge Parish, Louisiana, in accordance with the provisions of LSA-R.S. 30:5C.

3. That the said evidence establishes that the creation of the said reservoirwide unit is reasonably necessary for the prevention of waste and the drilling of unnecessary wells, and will appreciably increase the ultimate recovery of gas and condensate from the reservoir.

4. That the said evidence establishes that the proposed unit operation submitted by applicant is economically feasible, and should be approved and adopted.

5. That the Unit Area as shown on the plat labeled, "Celeron Oil and Gas Company Exhibit No. 4 for Docket No. 86-702", a copy of which is attached hereto and made a part hereof, is reasonable, comprises the entire known productive area of the Upper Tuscaloosa Sand, Reservoir A in the Irene Field, East Baton Rouge Parish, Louisiana, and it should be established and adopted as a single reservoirwide unit for the exploration for and production of gas and condensate from said reservoir.

6. That the separately owned tracts, mineral leases and other property interests within the Unit Area created herein should be force pooled and integrated, with each separate tract sharing in unit production in accordance with the schedule designated Tract Participation on the plat labeled, "Celeron Oil and Gas Company Exhibit No. 4 for Docket No. 86-702", which schedule is also attached to the Unit Agreement as Exhibit C.

7. That the allocation of unit production to each separate tract within the Unit, in accordance with Finding No. 6, shall insure the recovery by the owners of that tract of their just and equitable share of the recoverable gas and condensate in Upper Tuscaloosa Sand, Reservoir A, Irene Field, East Baton Rouge Parish, Louisiana, and

therefore, said method of allocation should be approved and adopted.

8. That the evidence received at the hearing establishes that the B-3Unit Agreement, which covers the plan and terms of unit operations, has been signed and executed by more than three-fourths in interest of the Owners and more than three-fourths in interest of the Royalty Owners in the Unit Area, calculated in accordance with LSA-R.S. 30:5C; that said Unit Agreement was filed with the Commissioner of Conservation on or before the day set for the hearing; and that said Unit Agreement should be approved and adopted insofar as authorized by the provisions of LSA-R.S. 30:5C.

9. That Celeron Oil and Gas Company should be designated as the operator of the unit created herein.

10. That the costs and expenses of the unit operation should be borne by the Owners of the tracts included within the reservoirwide unit in the same proportion that said tracts share in unit production, in the absence of a voluntary agreement to the contrary.

11. That to provide for efficiency in operations and to permit any additional wells to be located at optimum positions, the spacing rules of the Office of Conservation Order 1047 Series and Statewide Order No. 29-E should not apply to wells drilled within the Unit Area.

12. That the reservoirwide unit herein created should be granted a single reservoir allowable which can be produced from any well or wells in the unit, at Operator's option, subject to applicable Statewide Orders.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. The drilling and production units heretofore created by Office of Conservation Order No. 1047-B designated SU A, B, C, D, E and F, be and they are hereby dissolved and simultaneously there is created a single reservoirwide unit compromised of the entire Upper Tuscaloosa Sand, Reservoir A in the Irene Field, East Baton Rouge Parish, Louisiana, all in accordance with the provisions of LSA-R.S. 30:5C. said reservoirwide unit being shown on the plat labeled, "Celeron Oil and Gas Company Exhibit No. 4 for Docket No. 86-702", a copy of which is attached hereto and made a part hereof.

2. All separately owned tracts, mineral leases and other property interests within the reservoirwide unit herein established are hereby pooled, consolidated, and integrated in accordance with LSA-R.S. 30:5C and 10, with each tract sharing in unit production in accordance with the schedule designated Tract Participation on the plat labeled, "Celeron Oil and Gas Company Exhibit No. 4 for Docket No. 86-702", and as provided in the Unit Agreement in Exhibit C thereof.

3. The Unit Agreement is hereby approved and adopted in accordance with Finding No. 8 hereof.

4. Celeron Oil and Gas Company is hereby designated Unit Operator of the reservoirwide unit herein created.

5. The costs and expenses of unit operation shall be borne in accordance with Finding No. 10 hereof.

6. Future wells within the boundaries of the unit created herein which are completed in the Upper Tuscaloosa Sand, Reservoir A may be located in accordance with Finding No. 11.

7. The allowable for the reservoirwide unit herein created shall be granted and may be produced in accordance with Finding Nos. 11 and 12.

8. This order shall not vary or alter any of the terms of the Unit Agreement nor impose any terms or operations upon the non-signers of said Unit Agreement more onerous than the terms and operations set out in said agreement.

9. All provisions of the Office of Conservation Order 1047 Series which are contrary to the provisions of this Order are rescinded; however, except to the extent contrary herewith, all pertinent provisions of the Office of Conservation Order 1047 Series and all applicable Statewide Orders shall apply to the unit created herein.

10. When there is additional geological and engineering information which would indicate a required change or revision in the unit boundaries as adopted herein or which would indicate a required change or revision of other provisions of this order, the party or parties in possession of such additional information shall petition the Commissioner of Conservation for a public hearing for the purpose of considering appropriate changes.

This Order shall be effective on and after December 11, 1986.

OFFICE OF CONSERVATION
OF THE STATE OF LOUISIANA

/s/ Herbert W. Thompson
HERBERT W. THOMPSON
COMMISSIONER OF CONSERVATION

ML/lc

Celeron Oil and Gas Company
Exhibit No. 4 for
Docket No. 86-702 -
Attached

APPENDIX C

THE SUPREME COURT
FOR THE STATE OF LOUISIANA
DOCKET NO. 88-C-1036

KAISER ALUMINUM EXPLORATION COMPANY, INC.,
ET AL

Plaintiffs-Respondents

versus

THE HONORABLE HERBERT W. THOMPSON,
COMMISSIONER OF CONSERVATION AND ASSISTANT
SECRETARY, OFFICE OF CONSERVATION
OF THE STATE OF LOUISIANA

Defendant-Applicant

CONSOLIDATED WITH:

CHEVRON U.S.A. INC.

Plaintiff-Respondent

versus

HERBERT W. THOMPSON, COMMISSIONER OF
CONSERVATION

Defendant-Applicant

PLAINTIFFS-RESPONDENTS' MOTION FOR CERTIFICATE AS TO EXISTENCE OF A FEDERAL QUESTION

Now come Plaintiffs-Respondents 1/ in this matter and move this Court for the issuance of a Certificate As To Existence of a Federal Question. In support of this motion, Plaintiffss-Respondents show:

1.

Defendants-Applicants 2/ filed their Application for Writ of Certiorari on April 29, 1988. By Order dated May 20, of 1988, this Court granted certiorari and summarily reversed the Court of Appeal, First Circuit and reinstated the judgment of the district court. A copy of the May 20, 1988 order is attached hereto as Exhibit A.

2.

Plaintiffs-Respondents filed their Application for Rehearing on June 3, 1988, and their Supplemental Brief in Support of Application for Rehearing on July 7, 1988. By order dated September 9, 1988, this Court denied the Application for Rehearing.

1/ Plaintiffs-Respondents are Kaiser Aluminum Exploration Company, Park Lane Enterprises, Inc., Expec Resources, Ltd., Acme Brick Company, Leighton Ewell, Rose McMillan, Betty Craig, Dolese Concrete Company, Louisiana National Bank as trustee for the Kirk E. Williams, Jr. Inter Vivos Trust and the Bernadette S. Williams, Inter Vivos Trust, and Chevron U.S.A. Inc.

2/ Defendants-Applicants are Herbert W. Thompson, former Commissioner of Conservation of the State of Louisiana, J. Patrick Batchelor, current Commissioner of Conservation of the State of Louisiana, Celeron Oil & Gas Company, First Energy Corporation, Union Texas Petroleum, Terra Resources, Inc., Borden, Inc., and TXO Production Corporation.

3.

Plaintiffs-Respondents have contended in the district court, the Court of Appeal, First Circuit, and in this Court that the failure to provide actual notice by mail of a hearing subsequently conducted by the Commissioner of Conservation constituted a violation of Due Process Clause of the Fourteenth Amendment of the United States Constitution.

4.

Certain Plaintiffs-Respondents desire to present the issue of the violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution to the Supreme Court of the United States for review.

5.

As a result of this Court's summary reversal of the Court of Appeal, First Circuit, and the resulting absence of any indication from the Court as to the bases of its summary reversal, Plaintiffs-Respondents are left without a means to establish jurisdiction in the United States Supreme Court.

6.

Specifically, among the errors relied upon by Defendants-Appellants in their Application was the assertion that the Court of Appeal should be reversed for failure to dismiss the appeals of Leighton Ewell, Rose McMillan, Betty Craig, and Dolese Concrete Company on the ground of mootness. If this Court did conclude that the appeals of these Plaintiffs-Respondents were moot, than it necessarily follows that this Court did not reach the Due Process Clause violation issue as to these Plaintiffs-Respondents, which in turn would have a direct bearing on the jurisdiction of the Supreme Court of the United States.

7.

In addition, the absence of an opinion from this Court makes it difficult for Plaintiffs-Respondents to represent to the Supreme

Court of the United States that the federal Due Process Clause argument was raised in this Court, and impossible to determine whether this Court considered and rejected that argument. Both issues may be critical to establishing jurisdiction in the Supreme Court of the United States.

8.

Plaintiffs-Respondents have prepared and presented to this Court a Certificate as to Existence of a Federal Question, wherein this Court certifies as to the issues addressed above. Certificates of a similar nature have been utilized by the United States Supreme Court from time to time. See for example, Allenberg Cotton Company v. Pittman, 419 U.S. 20, 95 S.CT. 260, 42 L.Ed.2d 195 (1974).

WHEREFORE, Plaintiffs-Respondents request that this Court, through a designated Justice of this Court, execute the Certificate as to Existence of a Federal Question if this Court finds the representations contained therein accurate.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' Motion for Certificate as to Existence of a Federal Question has been served on all counsel of record by depositing same in the United States mail, postage prepaid and properly addressed this /s/5th day of December, 1988.

/s/ Judy Perry Martinez

THE SUPREME COURT
FOR THE STATE OF LOUISIANA
DOCKET NO. 88-C-1036

KAISER ALUMINUM EXPLORATION COMPANY, INC.; ET AL

Plaintiffs-Respondents

versus

THE HONORABLE HERBERT W. THOMPSON, COMMISSIONER OF CONSERVATION AND ASSISTANT SECRETARY, OFFICE OF CONSERVATION OF THE STATE OF LOUISIANA

Defendant-Applicant

CONSOLIDATED WITH:

CHEVRON U.S.A. INC.

Plaintiff-Respondent

versus

HERBERT W. THOMPSON, COMMISSIONER OF CONSERVATION

Defendant-Applicant

CERTIFICATE AS TO
EXISTENCE OF A FEDERAL QUESTION

This Court, in matter No. 88-C-1036, Kaiser Aluminum Exploration Company. Inc., et al. v. The Honorable Herbert W. Thompson, Commissioner of Conservation, consolidated with Chevron U.S.A. Inc. v. The Honorable Herbert W. Thompson, hereby certifies, upon motion of Plaintiffs-Respondents, that: (1) the applicants in their Application for Writ of Certiorari insisted that the Court of Appeal, First Circuit, erred in not dismissing Leighton Ewell, Rosa McMillan, Betty Craig, and Dolese Concrete Company's appeal on grounds of mootness; and, (2) this Court in reversing the Court of Appeal and reinstating the judgment of the district court did not base its decision on a finding that the aforementioned appeals to the Court of Appeal were moot.

This Court further certifies that: (a) Plaintiffs in their Application for Rehearing and Supplemental Brief in Support of Application for Rehearing argued that the failure to provide actual notice by mail of a hearing conducted by the Commissioner of Conservation violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution; (2) in its deliberation of this case, this Court considered this question of whether the failure to provide actual notice by mail of a hearing conducted by the Commissioner of Conservation violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution; and, (3) it was the judgment of this Court that the failure to provide actual notice by mail of a hearing to be conducted by the Commissioner of Conservation did not violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

New Orleans, Louisiana, this ___ day of _____, 1988.

SUPREME COURT OF LOUISIANA

_____

JUSTICE